IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 13667 of 2006(B)

OS.327/1985 OF II ADDL.SUB COURT,THRISSUR

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PETITIONER:

JANMABHUMI CHITS AND HIRE PURCHASE LTD.,
THRISSUR, REP. BY ITS MANAGER SASINDRAN,
AGED 43, S/O. MEENAKSHI AMMAL, THIRUVONATHU HOUSE,
VALLIALAKKAL DESOM, KANIMANGALAM VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR).

RESPONDENT:

K.V.BABU, S/O. KOLENGADAN VARAPPAN,
AYYANTHOLE VILLAGE DESOM,
THRISSUR TALUK.

BY ADV. SRI.K.P.DANDAPANI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.13667/2006-B:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE DECREE IN O.S. NO. 327/85 DTD. 05/12/88 ON THE FILE OF THE FIRST ADDL.SUB COURT, THRISSUR.

EXT.P.2: COPY OF THE JUDGMENT IN C.R.P. NO. 3046/01 DTD. 28/11/03 ON THE FILE OF THIS HONOURABLE COURT.

EXT.P.3: COPY OF THE WARRANT OF ARREST ISSUED BY THE SUB COURT, THRISSUR DTD. 27/07/04.

EXT.P.4: COPY OF THE WARRANT OF ARREST ISSUED BY THE SUB COURT, THRISSUR DTD. 10/08/04.

EXT.P.5: COPY OF THE ORDER PASSED BY THE SECOND ADDL. SUB COURT, THRISSUR DTD. 20/08/04 IN E.P. NO. 374/97 IN O.S. NO. 327/85.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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W.P.(C) No. 13667 OF 2006

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Dated this the 5th day of November 2007

JUDGMENT

This writ petition is preferred against the order of the Sub Judge, Thrissur in dismissing the execution petition, E.P.No.374 of 1997 in O.S.No.327 of 1985.The decree obtained is a money decree and even after 22 years of fight still the decree holder remains only in the corridor of the court for justice. Learned counsel for the respondent mainly argued on two points: (1)Though the order is passed on 20.8.2004, the writ petition is filed only in May, 2006 and relying on a decision of this Court reported in ***Gopalakrishnan v. State of Kerala(1986 K.L.T.817)*** it is submitted that there is unreasonable delay and therefore it should not be entertained. (2) The second point canvassed is that the remedy for the party was to file a revision petition and not a writ petition. The decision refers to a case filed under Article 226 of the Constitution of India. The present petition is filed under Article 227 of the Constitution of India which gives supervisory jurisdiction to the High Court to correct the inherent mistake committed by the courts below. I will just refer to the facts of the case to understand the

situation and then apply law so as to render justice to the parties. The decree holder obtained a decree in a suit filed in the year 1985. He moved an execution application. Plea of no means was raised. It reached upto the High Court. The High Court found means and sent back the matter to the court below. Thereafter out of caution, the decree holder moved an application for attachment of movables also as E.A.862/2004, which was subsequently dismissed. It is true that no writ petition is preferred or filed against E.A.No.862/2004. Therefore, the only question that remains for consideration is regarding the arrest.

2. Learned counsel for the petitioner submits before me that after the matter was sent back, only on 13.8.2004 there was a direction to the decree holder to help the Amin to point out the accused. But the order states that sufficient chances were given at the outset. It is true that the decree holder may have to co-operate and certainly he will co-operate. It is for him to see that the decree is executed and in such cases the court has to take a liberal approach in the subject matter and when especially a decree of earlier years is put into execution by dismissing the execution petition not only it is a temporary disposal but the right to recover itself gets lost. These are basic principles which have to be born in mind while considering these type of cases.

3. I think this is a fit case where inherent jurisdiction of the court under Article 227 of the Constitution of India has to be exercised. When such an illegality is pointed out to the court, the court is bound to correct the error. Though specific averments are not seen in the writ petition for the delay in filing application, the interest of substantial justice always demands that the decree holder should not be thrown out of court. He has come to the court to get the fruits of the decree. The judgment debtor is not able to be traced out for the purpose of arrest and the decree holder is knocking out the doors of the court after court for realisation of the amount. In such a situation, even if there is delay it has to be condoned for the purpose of rendering justice to the party. I find that Article 227 of the Constitution of India can be invoked and when Article 227 is invoked the question of revision under Section 115 C.P.C. may not arise. I am not prepared to dismiss the E.P.

4. So far as the merits is concerned, the means is already proved. The only question is to get the judgment debtors arrested. Even when he is brought arrested under Order 21 Rule 40 he may have something to say and he can pay the amount also or pay some amount and get himself released on kaichit and therefore the matter has to be further proceeded with. Therefore I find sufficient grounds to interfere with the order passed by the

learned Sub Judge. Therefore, the order under challenge is set aside and the E.P. is restored to file and the decree holder is directed to take further steps for execution of the decree as stated in his prayer.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-